

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	
Clark R. Baker, Jr.	§	Confirmation No.: 1106
	§	
Serial No.: 10/796,584	§	Group Art Unit: 3737
	§	
Filed: March 8, 2004	§	Examiner: Ramirez, John Fernando
	§	
For: Method and Apparatus for Optical	§	Atty. Docket: TYHC:0149/FLE/COH
Detection of Mixed Venous and	§	P0409R
Arterial Blood Pulsation in Tissue	§	

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December 29, 2008 Date	/W. Allen Powell/ W. Allen Powell

## INTERVIEW SUMMARY PURSUANT TO 37 CFR § 1.133

On December 22, 2008, Appellant's attorney, Jennifer C. Cohen (Reg. No. 62,144) conducted a telephone interview with the Examiner, John F. Ramirez, regarding the Examiner's Answer mailed on October 30, 2008. The Examiner had cited evidence dated 2006 to allegedly show what was known in the art at the time Appellant's application was filed on March 8, 2004. The Examiner agreed to submit evidence in existence at the time the application was filed to support the Examiner's argument that certain facts are "well known" in the art. However, it is presently noted that it is generally considered improper to introduce new evidence during appeal. See C.F.R. § 41.33; *see also* M.P.E.P. § 1207.03 (suggesting that new evidence as to what is "well-known" in the art is permissible only if challenged for the first time in the appeal brief).

In addition, in the interview, Appellant's attorney pointed out that even if venous blood in the finger contributes to motion artifact noise, nothing in the document cited by the Examiner

suggests that motion artifact is the same as venous pulsation. Each of the independent claims on appeal recites “detecting the presence or absence of venous pulsation.” (Emphasis added). The Examiner stated that the Response to Argument section of the Examiner’s Answer did not allege that motion artifact is equivalent to venous pulsation but implied that venous pulsation cannot be detected without noise; however, Appellant’s attorney failed to see how this argument was relevant to the claim rejections under 35 U.S.C. § 103. The Examiner suggested that Appellant prepare a Reply Brief to the present Examiner’s Answer, and an amended Examiner’s Answer will be filed promptly thereafter.

Respectfully submitted,

Date: December 29, 2008

/W. Allen Powell/

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